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OFFICE OF PETITIONS

In re Application of :
Hanna Albert Awad :
Application No. 09/886,862 :
Filed: November 20, 2001 :
Title: CONCEPTS AND THEIR :
APPLICATIONS, PUMPS, COMPRESSORS :
WORKING ON VALVES AND ENGINES :
WORKING ON THOSE COMPRESSORS

DECISION DISMISSING
PETITION UNDER 37 C.F.R. §1.137(a)

This is a decision on the petition filed November 1, 2004, pursuant to 37 C.F.R. §1.137(a)¹, to revive the above-identified application.

The above-identified application became abandoned for failure to file an appeal brief within two months of the submission of the Notice of Appeal. On September 24, 2002, a final Office action was mailed. On February 11, 2003, a Notice of Appeal was received, along with the fee associated with the filing of the Notice of Appeal and a two-month extension of time to make timely this response. No appeal brief was received. Pursuant to 37 C.F.R. §1.192², the failure to

1 A grantable petition pursuant to 37 CFR §1.137(a) must be accompanied by:

- (1) the required reply (in a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof);
- (2) the petition fee;
- (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, and;
- (4) a terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

2 37 CFR 1.192. Appellant's brief:

- (a) Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later,

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submit an appeal brief within two months from the date of the notice of appeal will result in the abandonment of the application. Accordingly, the above-identified application became abandoned on April 12, 2003. A Notice of Abandonment was mailed November 28, 2003.

The Changes of Correspondence Address, submitted on April 26, 2004 and May 3, 2004, have been entered and made of record.

Petition fee requirement

The fee for filing a petition to revive an unavoidably abandoned application under 37 C.F.R. § 1.137(a) is set forth in 37 C.F.R. § 1.17(l) as being \$500 for a large entity and \$250 for a small entity. Therefore, requirement number (2) has not been met.

The payment of the required petition fee is a prerequisite to the filing of a petition to revive under 37 C.F.R. § 1.137. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature. See M.P.E.P. 711.03(c)(III)(B)³

In view of the foregoing, this petition is **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.137(A)," and should include the petition fee. This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski.

To help assure prompt and proper attention to your response, please see Request for Alert Concerning Submitted Petitions, 1282 Official Gazette (May 18, 2004) for further information on how to assist the Office in delivering your submission to the correct location. The Petitioner may wish to consider telephoning the undersigned one month after the submission is made to confirm that the documents were properly delivered.

Any renewed petition may be submitted by mail⁴, hand-delivery⁵, or facsimile⁶.

file a brief in triplicate. The brief must be accompanied by the fee set forth in § 1.17(c) and must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

(b) On failure to file the brief, accompanied by the requisite fee, within the time allowed, the appeal shall stand dismissed.

³ "...[T]he payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application and cannot be waived. In addition, the phrase '[o]n filing' in 35 U.S.C. §41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. § 1.137. See H.R. Rep. No. 542, 97th Cong., 2nd Sess. 6 (1082), reprinted in 1982 U.S.C.C.A.N. 770 ('[t]he fees set forth in this section are due on filing the petition'). Therefore, the Office...will not reach the merits of any petition under 37 C.F.R. § 1.137 lacking the requisite petition fee."

The application file will be retained in the Office of Petitions for two (2) months.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.



**Paul Szarenski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office**

Alexandria, VA, 22313-1450.

5 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

6 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.